Jonathan Toebbe – Guideline Range Options

BOL 37 – Other than Top Secret (includes Restricted Data; Confidential classification)

BOL 42 – Top Secret

Assume in each scenario, +2 for Abuse of Position of Trust or Skill (USSG § 3B1.3)

Guidelines as calculated in PSR (BOL 37) (With -3 levels for Acceptance	Accept Binding Plea (BOL 37) (With -3 levels for Acceptance)	If Top Secret (BOL 42) (With -3 levels for Acceptance)	If went to trial (Based on BOL 37) (No Acceptance)	If went to trial (Based on BOL 42) (No Acceptance)
Imprisonment: 188 to 235 months Fine: $40,000 to $100,000	Imprisonment: 151 to 210 months Fine: $40,000 to $100,000	Imprisonment: 324 to 405 months Fine: $50,000 to $100,000	Imprisonment: 262 to 327 months Fine: $50,000 to $100,000	Imprisonment: Life Fine: $50,000 to $100,000

USSG § 2M3.1 Application Notes:

1. "Top secret information" is information that, if disclosed, "reasonably could be expected to cause exceptionally grave damage to the national security." Executive Order 13526 (50 U.S.C. § 3161 note).

2. The Commission has set the base offense level in this subpart on the assumption that the information at issue bears a significant relation to the nation's security, and that the revelation will significantly and adversely affect security interests. When revelation is likely to cause little or no harm, a downward departure may be warranted. See Chapter Five, Part K (Departures).

3. The court may depart from the guidelines upon representation by the President or his duly authorized designee that the imposition of a sanction other than authorized by the guideline is necessary to protect national security or further the objectives of the nation's foreign policy.

Background: Offense level distinctions in this subpart are generally based on the classification of the information gathered or transmitted. This classification, in turn, reflects the importance of the information to the national security.